

Rikal West, Inc. and Robert Kneifel. Case 20-CA-16397

March 22, 1983

DECISION AND ORDERBY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On May 26, 1982, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed limited exceptions and an answering brief to Respondent's exceptions, and Respondent filed an answering brief to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Rikal West, Inc., Burlingame, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Additionally, Respondent asserts the Administrative Law Judge's findings are a result of bias. After a careful examination of the record, we are satisfied that this allegation is without merit.

The General Counsel contends that the Administrative Law Judge erred in finding that employee Kneifel was suspended for tardiness twice rather than once. It is not clear from the record whether Kneifel was suspended once or twice. In any event, we find it unnecessary to pass on the General Counsel's exception since the finding he seeks would not affect the result of our decision.

² In adopting the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) and (3) of the Act by discharging Kneifel, we disavow his characterization of *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), to the extent that the Administrative Law Judge adopts the views of Courts of Appeals for the First and Third Circuits. Nevertheless, we note that under either the courts' view or the Board's view of *Wright Line* an unlawful discharge is established here.

Member Jenkins finds *Wright Line, supra*, inapplicable because the Administrative Law Judge found that Respondent's asserted reasons were not the real reasons for Kneifel's discharge. In the absence of dual motives, the application of *Wright Line, supra*, is misleading and confusing.

DECISION**STATEMENT OF THE CASE**

JERROLD H. SHAPIRO, Administrative Law Judge: This proceeding, in which a hearing was conducted on March 2, 1982, is based upon an unfair labor practice charge filed against Rikal West, Inc., herein called Respondent, by Robert Kneifel, herein called Kneifel. The charge was filed July 7, 1981, and on August 28, 1981, a complaint was issued against Respondent by the Regional Director of the National Labor Relations Board, Region 20, on behalf of the Board's General Counsel. The complaint was amended, without objection, at the outset of the hearing. The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act, by discharging Kneifel because of his union or protected concerted activities and independently violated Section 8(a)(1) by interrogating employees about their union activities and their communications with the National Labor Relations Board and by instructing employees not to communicate with the Board. Respondent filed an answer denying the commission of the alleged unfair labor practices.¹

Upon the entire record,² from my observation of the demeanor of the witnesses, and having considered the posthearing briefs submitted by the parties, I make the following:

FINDINGS OF FACT**I. THE ALLEGED UNFAIR LABOR PRACTICES****A. The Evidence**

Respondent, a California corporation, is a wholly owned subsidiary of Rikal, Inc., herein called Rikal, a Massachusetts corporation with its principal place of business in Wellesley, Massachusetts. In late 1975 Rikal opened an office in Westlake Village, California, which in 1976 was moved to Santa Ana, California. Late in 1978 or early 1979 Rikal opened an office in San Francisco, California, which in approximately April 1980 moved to Burlingame, California. These California facilities are operated by Respondent. Scott Smith, the manager of the Burlingame facility, reports to Tony Joyce who is Respondent's west coast regional manager. Joyce's office is located in the Santa Ana facility. Doug Mitchell is the manager of the Santa Ana facility.³

During the time material herein Respondent's Burlingame facility employed a minimum of 4 and a maximum of 10 production workers who installed and maintained

¹ In its answer Respondent admits that it meets the Board's applicable discretionary jurisdictional standard and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Also, Respondent admits that the Union herein, the International Brotherhood of Electrical Workers, is a labor organization within the meaning of Sec. 2(5) of the Act.

² Respondent's March 29, 1982, motion to correct transcript and the General Counsel's motion to correct transcript included in the General Counsel's post-hearing brief, which are unopposed, are granted in their entirety.

³ Respondent admits that Smith, Joyce, and Mitchell are statutory supervisors and agents of Respondent for purposes of the Act.

the cable used by department stores to connect the stores' computerized electric cash registers to the stores' central computer rooms. The installation of this cabling is performed by a crew of workers and takes several weeks. In addition, pursuant to a contract between Respondent and Wells Fargo bank, the workers perform WellService work which involves the installation and maintenance of small computer terminals located in retail stores. The computer terminals are used by these stores to authorize customers' purchases made by either credit card or check. Usually one employee installs two of these computer terminals daily and, with respect to the WellService maintenance work, usually one employee is able to handle several maintenance calls daily.

In 1974 Rikal entered into a collective-bargaining agreement with the International Brotherhood of Electrical Workers, herein called the Union, and in late 1979 entered into a successor agreement with the Union which is effective from November 1, 1979, through October 31, 1982. This agreement, by its terms, states that it is applicable to all Rikal's work throughout the United States. The section of the agreement entitled "Scope of Agreement" provides that the agreement covers:

Installation, maintenance, repairs and service work on input data lines, interface lines, acquisition lines, data reporting lines and relating peripheral equipment for the above, as well as instrumentation data reporting lines and related instruments when performed by employees covered by this agreement in the United States by [Rikal] or by any person, firm or corporation owned or controlled by [Rikal]

The parties stipulated that at all times material Respondent acknowledged that said collective-bargaining agreement covered the work performed at Respondent's Santa Ana and Burlingame facilities except for the WellService work done pursuant to its contract with the Wells Fargo Bank.

Robert Kneifel, the Charging Party and alleged discriminatee herein, began work for Respondent on August 15, 1979, at its Santa Ana facility. He was transferred to Respondent's San Francisco facility in December 1979 and then to the Burlingame facility when, in April 1980, the San Francisco facility was relocated there. The manager of the Burlingame facility, Scott Smith, and Kneifel shared an apartment from May 1980 until approximately March 1981. It is undisputed that until shortly before Kneifel's termination on January 28, 1981, Manager Smith and Regional Manager Tony Joyce regarded Kneifel as an outstanding employee with management potential. Kneifel was classified by Respondent as "senior WellService technician" and spent approximately 95 percent of his working time performing WellService work. On September 15, 1980, Smith submitted a written evaluation of Kneifel's work performance to Joyce which recommended that Kneifel be granted a 75-cent-an-hour pay raise. Smith's evaluation stated: "[Kneifel] has taken over WellService inventory. He has done very well with the inventory status report. WellService is very impressed with the job performance and customer

relations in the field. He has the capability to run the office in my absence." On October 27, 1980, Joyce approved Smith's evaluation and Kneifel, at that time, was granted the recommended pay raise.

The record establishes that it was not until November 1980 that Respondent acknowledged to its employees employed in Burlingame that they were represented by the Union and covered by Rikal's contract with the Union. In fact, Facility Manager Smith, by his conduct, gave Kneifel every reason to believe that the employees were not represented by any labor organization. Thus, in August 1980 Smith dispatched Kneifel to do some work on a "union job" located in the vicinity of San Jose, California, and instructed him to register at the Union's San Jose local using Smith's name and Smith's union membership card. Kneifel refused to do this explaining to Smith that he did not believe in engaging in that type of conduct. Smith and Kneifel then engaged in an argument over the matter. Kneifel stated he was not a member of the Union and did not believe in misrepresenting himself as Smith in order to work on the "union job." Smith told Kneifel that he did not understand Kneifel's concern because unions were no good and were the cause of all of the country's economic problems and were all corrupt. Kneifel told Smith that he came from a "very strong union family," that his father was a union president and although Smith was entitled to his opinion Kneifel could not do what Smith wanted. Smith did not press the matter.

In the summer of 1980 International Representative Thomas Roberts was assigned by the Union to investigate complaints by Burlingame employees Humphrey and Marlborough that Respondent was not complying with the terms of the Union-Rikal collective-bargaining agreement. After investigating their complaints Roberts, in November 1980, submitted his report to the Union.⁴ Thereafter on November 12, 1980, Respondent Regional Manager Joyce visited the Burlingame facility and handed Kneifel a union membership application. Joyce told Kneifel that to remain competitive Respondent just recently signed a contract with the Union and the employees had to join the Union as a condition of employment, but Respondent would pay their dues and fees.⁵ Joyce showed Kneifel a copy of the Union's contract with Rikal, afforded him an opportunity to look through it, and told Kneifel Respondent was complying with about 75 percent of the contract and was paying employees better subsistence benefits than provided for in the contract. With respect to the union membership application Joyce told Kneifel to write "trainee" in the space on the application reserved for "classification." Joyce explained to Kneifel that all of the employees except for Facility Manager Smith were classified as "trainees."

⁴ By this time Humphrey and Marlborough were no longer employed by Respondent.

⁵ During the same period of time Facility Manager Smith handed employee Shaun Neal a union membership application. Smith directed him to sign it explaining to Neal that "We have a union contract and everyone has to be a member."

Kneifel complied with Joyce's instruction and returned the completed union membership application to Joyce.⁶

After learning from Joyce on November 12, 1980, that the employees were represented by the Union and covered by Rikal's contract with the Union, Kneifel, for the next few days, spoke to the other employees on several occasions about the union contract. Some of these conversations occurred in the Burlingame facility's warehouse and parking lot. Kneifel was apparently observed by Manager Smith talking to the employees because on November 19 Smith asked him, "What is going on with you guys." When Kneifel answered, "What do you mean," Smith told him, "You've been sneaking around, I know something is going on and I want to know what it is." Kneifel informed Smith that he thought Joyce lied to him when he stated the union contract had only just taken effect as it was only recently negotiated. Kneifel explained to Smith that he had been trying to find out what was going on because he did not trust Joyce. Smith indicated that Kneifel should talk with Joyce about this matter and told him that Joyce was scheduled to visit the facility later that day at which time Kneifel would have an opportunity to speak with him.⁷

Later during November 19, as Smith indicated to Kneifel, Joyce visited the Burlingame facility. Smith sent Kneifel to the airport to meet and transport Joyce to the facility. When they met, Joyce told Kneifel that he was visiting the Burlingame facility specifically to talk with him because he understood there were problems about the union contract. Kneifel stated that he felt Respondent had perpetrated a fraud upon the employees inasmuch as Kneifel and the other employees believed they were not being paid the contractual rate of pay and felt they had been improperly classified as trainees. Kneifel pointed out to Joyce that he had been previously classified as a senior WellService technician, but that now for purposes of the union contract Respondent was classifying him as a trainee. Joyce asked if Kneifel knew how to operate an IBM installation. Kneifel stated he did not have that knowledge because he spent virtually all of his working time doing WellService work, but that if he went to the Union with his job description and title the Union would not classify him as a trainee. Kneifel also stated that it was his understanding that Respondent's payment of the employees' dues and initiation fees was a violation of the Taft-Hartley Act. Joyce asked why Kneifel would want to pay his own dues and fees to the

Union if the Company chose to do so. Kneifel asked why Respondent would want to pay his union dues. Joyce then asked what the employees intended to do. Kneifel indicated that at that point the employees had not spoken to anyone. Joyce asked, "What I mean is are you planning a strike or are you planning a work stoppage." Kneifel answered in the negative and told Joyce that the employees liked their jobs but wanted to be treated fairly according to the terms of the union contract. Joyce asked Kneifel to get together with the other employees and formulate a list of the employees' questions about those portions of the union contract they felt Respondent was not complying with and to submit the questions to Joyce who, with Respondent Vice President Kalin, would refer the employees' questions to the Union for a ruling. Kneifel agreed to do this. Later that same day, November 19, at the end of the workday, Joyce told Kneifel that he had talked with Vice President Kalin and they felt it was an oversight that when Manager Smith was granted a pay raise that Kneifel was not also given one and that effective immediately Kneifel's pay was raised from \$6 an hour to \$8.70 an hour⁸ and that Vice President Kalin would come to the facility in a few days at which time Kneifel could submit the employees' questions about the union contract.⁹

On the morning of November 24, 1980, prior to Kneifel leaving the facility to start work, Joyce spoke to him in the warehouse and asked for the list of questions which Joyce had asked for at their last meeting. Kneifel stated he did not have such a list and explained to Joyce that basically the employees' main concern involved their job classification and rate of pay. Kneifel also stated that since any agreement which Kneifel might reach with Joyce or Kalin would have to be a tentative one, Kneifel felt it was in the best interests of everyone to bring a representative of the Union into the discussions. Joyce frowned and ended the conversation with a terse

⁸ Under the terms of Rikal's contract with the Union the hourly rate of pay for "data-line installer" was \$8.70.

⁶ The above description of the November 12 conversation between Joyce and Kneifel is based upon Kneifel's testimony. Joyce testified he visited the Burlingame facility on November 12 to enroll the employees into the Union, but testified that Kneifel's description of their conversation is inaccurate insofar as Kneifel testified Joyce did not tell him that the employees were being required to sign the membership applications because the Union had directed Respondent to have them do so and testified that Joyce told him that the union contract had only recently been negotiated. Joyce also testified that Kneifel asked several questions about specific provisions of the contract which Joyce was unable to answer, so Joyce offered to find out the answers. I have rejected Joyce's testimony and credited Kneifel's because in terms of their demeanor while testifying about this conversation Kneifel impressed me as a more credible witness.

⁷ The above description of Smith's November 19 conversation with Kneifel and the fact that it took place on November 19 are based upon the testimony of Kneifel who in terms of his demeanor impressed me as a credible witness. Smith did not deny the conversation as it was described by Kneifel or that it took place on November 19.

⁹ The above description of Joyce's November 19 conversation with Kneifel and the date in which the conversation took place are based upon Kneifel's testimony. Joyce testified it was during the first week in December 1980 that Kneifel drove him from the airport to the Burlingame facility, not November 19, and that he could not have personally met with Kneifel on November 19 because during November 1980 he visited the Burlingame facility only twice, November 12 and 24. Regarding the substance of the conversation he had with Kneifel on the day Kneifel drove him from the airport, Joyce did not specifically deny any of the conversation as it was described by Kneifel. However, Joyce testified he also spoke to Kneifel at this time about Kneifel's responsibilities when Smith was scheduled to take his 2-week vacation late in December and that in this context discussed Respondent's motor vehicle policy. Joyce did not deny that Kneifel's rate of pay was increased to \$8.70 effective November 19, nor did Respondent introduce payroll or personnel records to contradict Kneifel's testimony in this regard. Kneifel specifically denied that during this conversation Joyce discussed what Kneifel's duties would be during Smith's vacation or discussed Respondent's motor vehicle policy. I have rejected Joyce's testimony about the date this meeting took place and what was stated at the meetings because in terms of demeanor Kneifel impressed me as the more credible witness. I also note that Joyce's testimony that he only visited the Burlingame facility twice in November, November 12 and 24, hence could not have possibly met with Kneifel on November 19, is consistent with his further testimony that he visited the facility on approximately November 20 or November 21 to inform the employees about the change in Respondent's motor vehicle policy.

reply which Kneifel was unable to recall.¹⁰ Immediately following this conversation, but before Kneifel on November 24 left the facility to start work, Manager Smith, within the space of 45 minutes, made the following remarks to Kneifel after first speaking to Joyce and Kalin, who at the time were in Smith's office. Smith told Kneifel that if the Company had to live by the union contract it would have to immediately lay off three employees and that since there was nothing in the union contract about seniority the Company could lay off any three people. Smith also stated the Company did not have to allow the employees to drive the Company's vehicles to and from work but could change that policy because there was nothing in the Union's contract that said the Company had to allow the employees to use company vehicles on their personal time. Also, Smith told Kneifel that Respondent could change the employees' workweek and have them work Tuesday through Saturday rather than Monday through Friday and that if an employee made a mistake on a job the Company, under the union contract, could send that person to repair the work on his own time.¹¹

In November 1980, following his November 24 conversations with Joyce and Smith, Kneifel spoke to union representative Roberts and arranged to meet with him at Respondent's Burlingame facility. In fact, one morning late in November, at the Burlingame facility prior to the start of work, Roberts met briefly with Kneifel and some of the other employees and showed them Rikal's contract with the Union and told the employees he wanted to meet with them to determine if Respondent was complying with the terms of the contract. Roberts arranged to meet with the employees at a local pizza parlor in a few days after work and asked them to submit to him in writing a description of their jobs and grievances.

Later during November, on the day of the meeting he had scheduled with the employees, union representative Roberts went to the Burlingame facility at the end of the employees' workday in order to go to the meeting place with them. Prior to leaving the facility for the meeting, Roberts spoke briefly to the employees and told them that as an international union representative he frequently traveled, so it would be difficult for the employees to contact him and suggested they elect an employee as shop steward who would serve as a conduit between Roberts and the employees. The employees selected Kneifel as their shop steward. Before leaving the facility Roberts went into the office accompanied by Kneifel and informed Smith that Kneifel had been appointed union shop steward and asked if Smith objected to Roberts phoning Kneifel about union business at the office. Smith indicated he had no objection.

Based upon the information he received from the employees, Roberts concluded that they should be receiving installers' wages under the terms of the collective-bar-

gaining agreement whereas Respondent was treating them as trainees or helpers for wage purposes. Late in November 1980 Roberts spoke to Smith and communicated this information to him. Thereafter in December 1980 and January 1981, Roberts met with Regional Manager Joyce and communicated his position to Joyce who apparently took the position that Rikal's contract with the Union either did not apply to the Burlingame facility or to the WellService work performed at that facility.¹²

On approximately December 1, 1980, Joyce wrote a note to himself, General Counsel Exhibit 18, which in its entirety reads as follows:

CONVERSION PROGRAM

Plan

12/1/80

a Reduce existing man power to base force to handle WellService only—3 Fieldpeople & 1 electrician [sic]

b Decision must be made as to whether [sic] to retain Kerry Fienk-Peregrina. Her new husband strong union affiliation and has had many discussions with our current employees and

c Training period for green Field person is two weeks—using Scott [Smith] and Frank Kiminsky to train and augmenting them with two knowledgeable people it would take 4 weeks for the new office to become self supporting. I would prefer not to use personnel from S.A. [Santa Ana] but Parkorney and Simko would be the best choices.

Joyce initially testified that General Counsel Exhibit 18 was in his handwriting and specifically testified that paragraph "b" was in his handwriting. But Joyce then testified there were some things "I don't think I [wrote]." The record does not reveal which portions of the note are supposedly not in his handwriting and his testimony that "I don't think I wrote" all of the note was not given in a persuasive manner. My examination of the handwriting in the note persuades me that the same person wrote the entire note. The following factors—Joyce's admission that he wrote the entire note and that paragraph b was in his handwriting, the fact that the note is in the handwriting of the same person, and my observation that Joyce's inconsistent testimony that he did not think he wrote all of the note was not given in a convincing manner—have persuaded me that General Counsel's Exhibit 18 was written in its entirety by Joyce.

Joyce testified that the thoughts set out in General Counsel's Exhibit 18 "were never on one piece of paper." Before I carefully examined General Counsel's

¹⁰ The above description of Kneifel's November 24 conversation with Joyce is based upon Kneifel's testimony. In terms of his demeanor Kneifel impressed me as being a credible witness when he testified about this conversation. Joyce did not deny his testimony.

¹¹ The description of Smith's November 24 remarks to Kneifel is based upon Kneifel's testimony. In terms of demeanor in presenting this testimony Kneifel impressed me as a credible witness. Smith did not deny making these remarks.

¹² On a date not set forth in the record, the Union filed a grievance against Rikal under the grievance-arbitration procedure provision of its contract with Rikal. The Union contended that the contract applied to the Burlingame facility and that Rikal, at that facility, was not complying with the contract in several respects. When the parties could not reach agreement over this grievance it was referred to the Council on Industrial Relations for the Electrical Contracting Industry whose decisions the contract provides shall be final and binding on the parties. On May 18, 1981, the council issued its decision on the Union's grievance and rules that Rikal's contract with the Union applied to the Burlingame facility and that Rikal was in violation of the contract as alleged by the Union.

Exhibit 18 I stated that I felt it was a composite of several different documents. However, a close scrutiny of General Counsel's Exhibit 18 persuades me that I erred and this is not the case. There is no indication on its face that General Counsel Exhibit 18 consists of parts of several different documents xeroxed one upon the other so as to appear to be one document. Moreover, an examination of the contents of the exhibit reveals that the three lettered paragraphs therein—a, b, and c—are a part and parcel of the same subject matter, namely, a conversion program whereby the number of employees employed at the Burlingame facility would be reduced with the current employees being replaced by other employees. These circumstances and my poor impression of Joyce's demeanor when he testified his handwriting on General Counsel's Exhibit 18 was "never on one piece of paper" have led me to reject his testimony that the writing contained in General Counsel's Exhibit 18 was not meant to be a part of the same document.

With respect to the circumstances which prompted him to write General Counsel Exhibit 18 Joyce testified as follows:

There was a point when it was determined that the confidential files of the Burlingame office had been made available to unauthorized personnel and others where specific information had been removed from personnel records. Other items would be—that was difficult to determine as to what extent had been removed if an entire folder was gone, other than the fact in attempting to research items, personnel items, and some records, other records, it is found that there were specific gaps in all of our information. At that point in time . . . we are talking fall 1980 . . . prior to December 1980. At that point in time in order to assure myself, I made some notes as to what if I had to go through a general house cleaning and if the information that had been taken from our records were taken by specific individuals, then this is what would have had to have done and this would be the worst case, but this would be the program that I would have to pursue as a prudent manager . . . it's basically a stream of consciousness, as I recall, done on a plane, if I remember other parts of that, and there was no way at that point in time I could come to a distinct decision and I tore those—that information up and never made a recommendation.

In short, Joyce testified that because he discovered that confidential files from the Burlingame facility had been made available to unauthorized personnel and specific information from the files had been removed he considered cleaning house, that is, replacing the current employees at Burlingame with others. I reject this testimony in its entirety. First, demeanorwise when Joyce presented this testimony he looked very uncomfortable and did not seem sincere. Second, if in fact unauthorized personnel had gotten a hold of and taken information from personnel files at the Burlingame facility it would seem logical that the manager of that facility, Scott Smith, would have brought this matter to Joyce's attention inasmuch

as Joyce's office was located several hundred miles away, and only rarely did Joyce visit Burlingame, yet Smith was not called upon to corroborate Joyce's testimony. Third, other than the vague and ambiguous testimony Joyce gave about the unauthorized disclosure and taking of personnel information, Joyce's testimony was singularly lacking in any specifics about what files or information had been wrongly made available to personnel or were missing or how he came to discover the wrongdoing. Fourth, Joyce failed to explain why, in order to punish the person or persons responsible for the unauthorized disclosure of information from the personnel files, it was necessary, as set forth in General Counsel Exhibit 18, to contemplate terminating virtually all the employees employed at Burlingame and to limit the work of that facility to simply WellService work. Last, there is no evidence that, when Joyce allegedly discovered in the fall of 1980 that confidential information had been available to the employees and certain of this information was missing from personnel files, Joyce took any steps at that time to put a stop to this type of conduct or even threatened employees with discipline for engaging in this misconduct.¹³ Based upon the foregoing I find that the explanation advanced by Joyce for writing what is contained in General Counsel's Exhibit 18 is false. Rather, I find that the record as a whole establishes that when Joyce wrote General Counsel's Exhibit 18 on approximately December 1, 1980, he was contemplating terminating Kneifel and other employees employed at the Burlingame facility because of union considerations. Thus, on November 24, 1980, Kneifel made it plain to Regional Manager Joyce that the employees at the Burlingame facility would insist that Respondent comply with the terms of the union contract at that facility and also informed Joyce that he intended to contact a representative of the Union to enforce the employees' demands. Later that same day Scott Smith, the manager of the Burlingame facility, after talking with Joyce and Vice President Kalin, threatened Kneifel that Kneifel and the other employees would suffer reprisals if Respondent was required to comply with the union contract. Thereafter, later in November 1980, Respondent learned that Kneifel had in fact contacted a union representative who had arrived on the scene and that Kneifel had been selected by the employees as their shop steward. It was in this context that on or about December 1, 1980, Joyce, as he put it, was contemplating whether or not he should "clean house" at the Burlingame facility. Under these circumstances and in view of the false reason Joyce advanced for contemplating "cleaning house" and the fact that the sole reason noted by Joyce in his note for contemplating "cleaning house" was the fact that Peregrina's husband was a strong union sympathizer who was seen talking to the Burlingame employees, I find that the record establishes that on approximately December 1, 1980, Joyce was contemplating discharging Kneifel and

¹³ I recognize that office clerical employee Kerry Peregrina testified that in January 1981 Manager Smith asked her if she knew of employees going into the personnel files. However, this conversation post-dated the events which Joyce claims prompted him to write General Counsel's Exhibit 18 by several months.

the other employees employed at the Burlingame facility because of their support for the Union's effort to require Respondent to abide by the terms of a contract between Respondent's parent company Rikal and the Union.

During December, in his capacity as union shop steward, Kneifel met with employees and discussed the collective-bargaining contract and stayed in touch with union representative Roberts. On occasions Roberts phoned Kneifel at the Burlingame facility office.

Early in December 1980 Manager Smith asked Kerry Peregrina, the office clerical employee at the Burlingame facility, if Kneifel had been in touch with the Union. Smith told Peregrina that Kneifel had organized the employees into the Union and asked Peregrina whether Kneifel was planning to ask for a higher wage rate. Smith also asked why Peregrina was seeing Kneifel so frequently and whether Peregrina's husband had been discussing the Union with the employees.¹⁴ Peregrina stated her husband talked with the employees all the time and that she was a friend of Kneifel's and that her husband was doing some repair work on Kneifel's car. Smith asked whether Peregrina and Kneifel were discussing the Union. Peregrina answered in the negative. Thereafter, between the middle of January 1981 and Kneifel's discharge on January 28, 1981, Smith, on several occasions, asked Peregrina whether Kneifel "had been in contact with the Union" or "if [Kneifel] had talked to Tom Roberts." He also asked Peregrina whether Roberts had phoned for Kneifel. On those occasions when Roberts had in fact phoned the office and asked for Kneifel, Peregrina, in response to Smith's inquiry, informed him of this. During the same period of time, mid-January, Smith asked Peregrina "if [she] knew if the guys were getting together and . . . if they were having a meeting at [Peregrina's] house and . . . told [Peregrina] that [she] should not get together with the guys." Peregrina told Smith that she would do whatever she wanted.¹⁵

During the week of January 12, 1981, Peregrina and Kneifel visited the Regional Office of the National Labor Relations Board where Peregrina received some written information which she placed in an envelope with the Board's return address and placed the envelope in her purse. On approximately January 13 Peregrina left her purse overnight in the office and the next day it appeared that someone had looked through its contents. On approximately January 19 Smith asked whether Peregrina "had been to the Labor Board." Peregrina answered yes. Smith then asked "if Bob Kneifel had been

to the Labor Board." Peregrina answered yes. Smith asked why Peregrina had visited the Labor Board and what she and Kneifel were planning to do. Peregrina replied she did not plan to do anything at that moment but asked Smith what she should do if someone asked her to go to the NLRB. Smith replied that "he did not know" and was interrupted by office business and when he again spoke to Peregrina in approximately 15 minutes told her "[she] should ask Tony [Joyce]."¹⁶ Shortly thereafter Peregrina phoned Joyce and asked him what she should do if an employee asked her to go to the Board. Joyce told her he could not advise her about this and that it was totally her decision.¹⁷

On approximately November 24, 1980, or shortly thereafter, Smith notified the employees of the Burlingame facility that they would have to stop using company vehicles for driving to and from work but that from now on at the end of the workday they would have to leave their company vehicle at the facility and pick it up in the morning rather than take it home. In other words, the employees had to use their own automobiles or public transportation to get to and from the facility. Late in November 1980 or during the first week of December 1980 Joyce spoke to Kneifel and employee Neal in Joyce's motel room when they came to give him a ride to the Burlingame facility. Kneifel and Neal questioned Joyce about the new policy whereby the employees could not take a company motor vehicle home at the end of the workday. Joyce told them that Respondent would not rescind this policy. He explained that the change in policy had nothing to do with the situation involving the union contract but that recently the Company's insurance rates had increased substantially because a couple of automobiles had been broken into while parked at employees' residences, that an employee using a company car had been involved in a hit-and-run accident, and that there had been a lot of traffic violations issued involving company vehicles. Kneifel and Neal pointed out that at times it was more convenient for both the Company and employees for an employee to drive a company vehicle home at the end of the workday rather than return it to the facility. Joyce stated that Respondent was not inflexible in the application of its work rules and that he could see there could be situations where exceptions to the motor vehicle policy would be appropriate. Kneifel asked whether the employees had to contact Joyce each time a situation arose which might be grounds for such

¹⁴ The record reveals that Peregrina's husband worked for a company whose employees were represented by the Teamsters Union and he was a member of that union.

¹⁵ The description of the conversations between Smith and Peregrina set forth in this paragraph are based on Peregrina's testimony. Smith did not specifically deny any of Peregrina's testimony. Smith testified that he spoke with Peregrina about the Union on approximately four or five occasions, that some of these conversations were initiated by Peregrina and some were initiated by himself, and that once Peregrina brought up the subject by telling Smith that "the guys are going to the Union." Smith was unable to recall anything else that was stated in this conversation or in his other conversations with Peregrina about the Union. I have credited Peregrina's versions of her several conversations with Smith because in terms of demeanor Peregrina impressed me as an honest and reliable witness, a more credible witness than Smith, and Smith failed to specifically deny the comments attributed to him.

¹⁶ The description of Smith's conversation with Peregrina about the NLRB is based upon Peregrina's testimony. Smith was not able to recall any of the specifics of the conversation other than the fact that when Peregrina asked whether she should go to the NLRB if requested to do so that Smith testified he told her "it was her own will if she did, that I will not stop her if she wanted to." I have credited Peregrina's version of this conversation because in terms of demeanor she impressed me as a more credible witness than Smith. I recognize that at one point Peregrina testified that in response to her inquiry about going to the Board Smith told her not to talk to the Board. However, on cross-examination she inconsistently testified that Smith, in response to this inquiry, "told me I should ask [Joyce]." Admittedly Peregrina, immediately after this conversation with Smith, phoned Joyce for advice about this matter. Accordingly, I have found that Smith told Peregrina to phone Joyce for advice rather than not to talk to the Board.

¹⁷ Smith's conversation with Joyce about the NLRB is based on Joyce's undenied testimony.

an exception. Joyce replied in the negative, stating that in addition to himself that Smith, as manager, and Kneifel as the senior WellService technician had the authority to authorize employees to take a company vehicle home if the situation warranted it. Also during this conversation Kneifel and Neal told Joyce that outside of about five items which were in dispute between the Union and the Company such as employees' job classifications, holidays, and per diem, the employees were not unhappy about the way Respondent was treating them and told Joyce that the matter involving the union contract did not have to get out of control. Joyce informed them, "Let's get everything together because some of these items are under consideration in other ways between the Company and the [Union]. There are other items which have not been questioned, but let's have a detailed listing at least to get as many things up and going as we could at the time."¹⁸ Thereafter, when Joyce and Kneifel arrived at the facility that day Joyce told Smith that whenever there were circumstances which warranted an exception to the Company's policy of not allowing employees to take company vehicles home both Smith and Kneifel had the authority to make exceptions to this policy.¹⁹

During the 2-week period encompassing Christmas and New Year's Day, Smith, the manager of the Burlingame facility, was absent from work on his vacation and did not return to work until Monday, January 5, 1981. During the second week of his absence Doug Mitchell, the manager of Respondent's Santa Ana facility, who was admittedly a statutory supervisor and an agent of Respondent, came to the Burlingame facility and worked there for 2 days. While there, one evening Mitchell visited with employees Kneifel and Neal at Kneifel's apartment. Mitchell told them that one of the reasons he was at Burlingame in Smith's absence was to evaluate the way Smith was operating the office and that his evaluation was that Smith was doing poorly. Kneifel asked Mitchell why Respondent did not treat the employees better and pay them higher wages so they would remain longer and do better work. Mitchell stated that Respondent Vice President Kalin did not want to pay employees very good wages but favored employing employees whom he could pay between \$4 and \$5 an hour, but that every so often one or two employees would get wise about what was going on with respect to the union contract and go to either the Union or the Government whereupon Kalin ended up paying these employees off because Kalin thought it was cheaper to do that than it was to pay all the employees the wages called for by the collective-bargaining agreement. Mitchell told Kneifel and Neal that, if the employees intended to pursue their grievance against Respondent, they should pursue it as hard as they could because Respondent was definitely

going to get them. Mitchell told Kneifel that the Company considered him to be a "troublemaker" and so Kneifel had nothing to lose by pursuing the grievance or going to the Government.²⁰

Respondent Rikal's contract with the Union requires that employees shall be paid a subsistence allowance of \$15 per day if they are required by the Employer to work at a job location which is more than 50 miles from their permanent residence or which requires that they remain away from their permanent residence overnight. Although Respondent apparently paid the employees a subsistence allowance if the employees were required to be away from their residence overnight, it did not otherwise follow the aforesaid contractual provisions. In January 1981 several of Respondent's Burlingame employees discussed this situation and decided that for the week ending Friday, January 9, they would submit expense vouchers for work they had performed outside a 50-mile radius from their homes. Several of the employees, including Kneifel, submitted such vouchers at which time Smith informed Kneifel that Smith would not accept his expense voucher. Kneifel asked whether Smith intended to take the responsibility of making the decision not to pay him subsistence for working outside the 50-mile radius or was he going to let Respondent Vice President Kalin make the decision. Smith stated he would not approve Kneifel's voucher, but would simply submit it to Kalin.

During the week ending Friday, January 23, 1981, Kneifel, on Monday, January 19, was approximately 1 hour late for work because he overslept; on January 20 he was not late for work, but left early because he was sick; on January 21 he stayed home sick; on January 22 he arrived at work on time and worked the entire day; and on Friday, January 23, at approximately 8 a.m. Kneifel, who was suffering from colitis, phoned the office and informed office clerical Peregrina that he was sick and would have to take the day off. But, when Peregrina advised him that the Company was in a bad bind and needed him at work badly, Kneifel stated that he would come to work and thereafter arrived 1 hour and 22 minutes late. Peregrina credibly testified she notified Smith that Kneifel had phoned in sick but had agreed to come in to work after Peregrina had told him that he was needed.

The Burlingame facility is not open for business on Saturday but operates with an "on call" technician. On Saturday, January 24, Kneifel was on call and was

¹⁸ The description of the portion of this meeting wherein the subject of the Company's motor vehicle policy was discussed is based on a synthesis of the testimony of Kneifel, Neal, and Joyce which was not inconsistent. The description of the remainder of the meeting is based on the undenied testimony of Joyce.

¹⁹ The description of Joyce's comments to Smith and Kneifel are based on the undenied testimony of Kneifel which was corroborated by the testimony of office clerical Peregrina, who was present during the conversation.

²⁰ The description of Mitchell's conversation with Kneifel and Neal is based on the undenied testimony of Kneifel. Kneifel, in terms of his demeanor when he presented this testimony, impressed me as a sincere and reliable witness. I have not relied on Neal's version of the conversation because Kneifel impressed me as the more reliable witness. Respondent did not call Mitchell to testify about this conversation. I recognize that this conversation was not alluded to in the complaint, thus, Respondent had no knowledge that Mitchell's testimony would be relevant to this proceeding. However, at the outset of the hearing Respondent, without objection, permitted the General Counsel to amend the complaint to allege Mitchell as a statutory supervisor and did not thereafter object to the introduction of the evidence pertaining to this conversation and did not request that the hearing be continued so that it could call Mitchell to rebut Kneifel's testimony or at the very least consult with Mitchell about his version of the conversation.

scheduled to work from 8 a.m. to 6 p.m. The on-call technician has a beeper through which customers who need service contact him. Smith, who shares an apartment with Kneifel, drove Kneifel to the facility on January 24 so Kneifel could pick up a company vehicle. After making two service calls Kneifel returned to the office early in the afternoon and when he discovered that the office was locked returned to his apartment, which was permissible, where he spent the rest of the workday on call. He parked the company vehicle in the apartment's parking lot, where it stayed for the entire weekend. The parking lot is patrolled by a security service. Smith observed the vehicle parked there but said nothing to Kneifel about it that weekend nor did Kneifel that weekend say anything to Smith about it. Kneifel did not use the vehicle that weekend but simply left it in the parking lot.

On Monday, January 26, Smith, the first thing in the morning, phoned Joyce at the Santa Ana facility and told him that on Saturday Kneifel had taken a company vehicle and kept it over the weekend without permission. Smith remarked to Joyce that "with this" they either "could get" Kneifel or that Kneifel "will be gone." Peregrina who overheard this telephone conversation asked Smith what was going to happen to Kneifel. Smith told her that Kneifel would probably get a suspension.²¹

On Monday, January 26, 1981, Kneifel was 19 minutes late for work. The next day, Tuesday, January 27, when Kneifel arrived for work Smith spoke to him about his tardiness. Smith told Kneifel, "This kind of thing is going to have to stop." Kneifel promised he would not be tardy again.

Later during January 27, in the morning soon after Smith had talked to Kneifel about his tardiness, Kneifel was given a memo dated January 23, 1981, addressed to him from Joyce which was captioned "*Subject: Confirmation of verbal instructions to you from your office manager.*" The memo reads as follows:

Effective January 19, 1981 you are relieved of all responsibility to oversee the general inventory of terminals maintained at the Burlingame Office.

The reason for this action is the totally unprofessional manner in which this responsibility was handled during the period of 12/22/80 through 1/16/81:

- a. No weekly reports were made for 3 weeks.

²¹ It is undisputed that on Monday, January 26, Smith phoned Joyce about the fact that Kneifel had kept a company vehicle after work on Saturday. The above description of what Smith told Joyce and Peregrina is based on Peregrina's testimony. Peregrina was present in the office immediately adjacent to Smith's desk when he phoned Joyce. In terms of her demeanor while testifying about Smith's remarks Peregrina impressed me as a trustworthy and reliable witness. Neither Joyce nor Smith specifically denied the remarks Peregrina attributed to Smith when he spoke to Joyce nor did Smith deny the remarks attributed to him when he spoke to Peregrina. I recognize that, while Peregrina testified that Smith told Joyce "with this, they will be able to get [Kneifel]," in her prehearing preaffidavit submitted to the NLRB she stated Smith told Joyce "with this [Kneifel] will be gone." In my opinion since the meaning of each statement is virtually the same the inconsistency between Peregrina's testimony and her affidavit is insufficient to impugn her credibility, particularly whereas here her testimony was not specifically denied.

- b. Reports were inaccurate.

- c. Unprofessional verbal communications with the customer.

- d. Continual verbal assurances to me that these items were being maintained and reported on a regular basis.

The impact of this has damaged the credibility of this company with its' customer, and further action in this matter will be taken.

Immediately after reading the memo Kneifel went to Smith and told him that he thought Joyce had "jumped the gun" in issuing the memo because Smith had never spoken to him about the matters contained therein. Smith replied, "I told you your inventory reports had been late." Kneifel answered, "That's not the substance of the memo. It says that I have been relieved of the responsibility to oversee inventory." Smith admitted to Kneifel that this came as a surprise to him.

On January 27, shortly after Kneifel spoke to Smith about Joyce's January 23 memo, Smith, referring to the fact that Kneifel had taken a company vehicle home on Saturday and not returned it until Monday, told Kneifel, "This business of taking a vehicle home is going to have to stop." Kneifel asked why, if Smith at the time it occurred had felt it was a problem had not said anything to him about it as Smith knew the vehicle was parked in the apartment parking lot. Smith told Kneifel, "That's not the point. You were supposed to bring it back." Kneifel answered, "I did not think it was a problem so I just left it where it was."²²

On January 27 between 3 and 4 p.m., after Kneifel had returned to the Burlingame facility from his service calls, Smith asked Kneifel to sign a memo dated January 27, 1980, addressed to Joyce from Smith on the subject of "Robert Kneifel's tardiness." The memo stated:

As of today Robert Kneifel has been counseled on his tardiness on these days: January 19th 9:08, 21st 8:55, 23rd 9:22, 26th 8:19.

Due to his tardiness the operation of this office is being affected. He understands that if he does not resolve this problem further disciplinary action will be taken.

Shortly thereafter, before he left for the day, Kneifel was handed a Western Union mailgram addressed to him from Joyce which was dated January 26 and which reads as follows:

You are hereby placed on warning that your failure to return company vehicle to office after close of business on Saturday 1-24 is a flagrant violation of company rules and regulations. I will notify you before close of normal working hours on Wednesday 1-28 re resolution of this matter.

²² Based on Kneifel's testimony. Smith testified that it was on Monday, January 26, when he spoke to Kneifel about the company motor vehicle. I have credited Kneifel in this regard because demeanorwise he impressed me as a more credible witness than Smith.

Upon reading the mailgram Kneifel went to Smith and asked, "What is this? You know I told you this morning that I would not do anything with the vehicle anymore." Smith denied having any knowledge about the mailgram and stated he had no knowledge that Joyce intended to take any action about the matter but that Joyce would be in the office the next day at which time Joyce would probably discuss that matter with Kneifel.

The next day, Wednesday, January 28, 1981, Kneifel worked the full day. Joyce, who had arrived at the facility that morning, called him into the office at the end of the workday and stated he would like to have a discussion with Kneifel before Kneifel left for the day. Kneifel stated he would like to have his union representative present for the discussion. Joyce stated that this was impossible because "You are facing discharge." Kneifel stated that if he was facing discharge then he would have to insist that his union representative be present for the discussion. Joyce stated that this was impossible because "You're being terminated effective immediately" and handed him an envelope with cash in it and a typed statement of Kneifel's earnings up through that day. Joyce then declared, "You know, now that it is over with, maybe we can have that discussion anyway," and asked, "What happened to the old Bob Kneifel who was rarely, if ever, late and whose work habits set an example for the other technicians." Kneifel stated, "I don't agree with you and I don't want to discuss this any further," and left the office.²³

B. Conclusionary Findings and Discussion

1. Kneifel's discharge

a. *The General Counsel's prima facie case*

Since 1974 the Union and Respondent's parent company Rikal have been parties to successive collective-bargaining agreements which by their terms covered certain enumerated work performed not just by Rikal's employees but also by the employees employed by companies owned by Rikal, such as Respondent. In November 1980, after a representative of the Union began an investigation of employees' claims that Respondent was not complying with the terms of the collective-bargaining agreement at the Burlingame facility, Respondent acknowledged to the Burlingame employees that they were covered by Rikal's contract with the Union. Respondent and the Union, however, disagreed in several respects about the interpretation of the contract and how the contract should be applied to the Burlingame facility. One of the several disputes between Respondent and the Union involved the way the employees were being classified by Respondent for purposes of the contractual wage rates. The Union, on behalf of the employees, took the position that the employees should be classified for pay purposes as installers rather than as trainees as Respondent had

classified them. The difference in pay between the contractual rate of pay for an installer and a trainee is substantial.

When the Burlingame facility employees in November 1980 learned they were represented by the Union and covered by Rikal's contract with the Union, Kneifel, who Scott Smith, the manager of the Burlingame facility, knew was a strong union adherent, took the position that the employees were not trainees as Respondent claimed but were installers and should be paid the contractual rate of pay for that classification. On November 19, 1980, Respondent Regional Manager Tony Joyce tried to persuade Kneifel that the employees had been properly classified by Respondent as trainees for wage purposes. Kneifel rejected Joyce's arguments and made it plain to him that he intended to grieve to the Union on behalf of himself and the other employees in an effort to require Respondent to pay them the contractual rate of pay for installers and to otherwise comply with the terms of the contract. Later that same day, November 19, in order to discourage Kneifel from bringing the employees' grievances to the Union's attention, particularly their wage grievance, Joyce increased Kneifel's hourly rate of pay from \$6 to \$8.70 an hour, which is the rate of pay for installers under the contract.²⁴ Nevertheless, on November 24 Kneifel told Joyce that he still intended to contact a representative of the Union and have the union representative deal with Joyce about the employees' grievance including their wage grievance. Immediately thereafter on November 24 Joyce conferred with Facility Manager Smith who then threatened Kneifel with reprisals if he went through with his expressed intention of pressing the employees' grievances through the Union. Smith warned Kneifel that, if Respondent was required to comply with the union contract, it would immediately lay off three employees and inferred that Kneifel could be one of those selected for layoff since the contract did not require that employees be selected for layoff on the basis of seniority. Smith also warned Kneifel that the union contract did not prohibit Respondent from stopping employees from using company vehicles on their personal time and that it did not prohibit Respondent from changing the workweek from Monday through Friday to Tuesday through Saturday, or from requiring the employees to redo their mistakes without pay. Despite Smith's warnings, Kneifel, late in November, contacted union representative Roberts and arranged for him to

²³ Based on the testimony of Kneifel. Although there is really no significant difference between Kneifel's and Joyce's version of Kneifel's termination interview, other than the fact that Kneifel's version was presented in greater detail, I have credited Kneifel's version because demeanor-wise he impressed me as a credible witness whereas Joyce, in terms of his demeanor in general, gave me the impression that he was not a sincere or reliable witness.

²⁴ That Kneifel's November 19 pay raise was motivated by a desire to discourage him from going to the Union with the employees' wage and other grievances is demonstrated by the following circumstances: (1) only 3 weeks earlier Kneifel had received a 75-cent-an-hour pay raise; (2) Respondent failed to explain the reason for Kneifel's November 19 pay raise; (3) Doug Mitchell, the manager of Respondent's headquarters facility in Santa Ana, admitted to employees Kneifel and Neal that the policy of Respondent Vice President Kalin was to pay the employees a wage which was significantly below the contract rate of pay, but that every so often one or two employees would discover that Respondent was not complying with the contract whereupon Kalin would "pay these employees off" because he felt it was cheaper to pay one or two employees the contract rate than to pay all the employees that rate; and (4) immediately after Kneifel indicated to Joyce that despite the pay raise he intended to go to the Union, Respondent, through Facility Manager Smith on November 24, 1980, threatened Kneifel with various reprisals if Respondent were required to comply with the union contract.

meet with the employees so that the employees could represent their grievances. The meeting took place late in November at which time the employees elected Kneifel to act as their union shop steward. Respondent was promptly notified by union representative Roberts that Kneifel had been selected by the employees as their shop steward and that the Union intended to press the employees' grievances including their wage grievance. Respondent apparently took the position that the Rikal contract did not apply to the Burlingame facility or to the WellService work performed by the employees.

Immediately after discovering that Kneifel, despite his substantial pay raise and the warnings issued to him by Manager Smith, had gone to the Union with the employees' grievances, that the employees had met with a union representative and appointed Kneifel as a shop steward, and that the Union intended to press the employees' grievances, Respondent Regional Manager Joyce, on approximately December 1, 1980, as I have found *supra*, contemplated discharging Kneifel and other employees employed at the Burlingame facility because of their union activities in seeking the aid of the Union to require Respondent to comply with the terms of the collective-bargaining agreement.²⁵

During December 1980 Kneifel continued to act as the employees' union shop steward. He met with the employees to discuss the situation involving the union contract and stayed in touch with union representative Roberts who on occasion phoned him at the Burlingame facility office. In January 1981 Kneifel visited the Regional Office of the National Labor Relations Board with employee Peregrina and on January 9, 1981, along with other employees, submitted an expense voucher claiming subsistence pay computed according to the union contract. Manager Smith refused to authorize these vouchers, but upon Kneifel's insistence agreed to submit Kneifel's voucher to Vice President Kalin.

During December 1980 and January 1981 Respondent, through Manager Smith, tried to keep informed about Kneifel's union activities. In December Smith asked office clerical Peregrina whether Kneifel had been in touch with the Union and whether Kneifel was planning to ask for a higher wage rate; he also asked whether Peregrina and Kneifel were discussing the Union. On several occasions in January 1981, Smith asked Peregrina whether Kneifel had been in contact with the Union or had talked to union representative Roberts and whether Roberts had phoned the office asking for Kneifel. Peregrina answered in the affirmative. Also in the middle of January 1981 Smith learned that Kneifel had visited the Board's Regional Office with Peregrina and Smith asked

Peregrina what she and Kneifel were planning on doing going to the Board.

Late in December 1980 Doug Mitchell, the manager of Respondent's headquarters facility in Santa Ana where Regional Manager Joyce maintains his office, while talking with Kneifel and employee Neal about the fact that the employees had grieved to the Union about Respondent's failure to comply with the union contract, informed them that Respondent's management considered Kneifel to be a "troublemaker" and that because of this Kneifel, in Mitchell's opinion, had nothing to lose by pursuing his grievance or going to the Government.

In summation, the record shows that Respondent and the Union were engaged in a dispute over the application of the contract between Rikal and the Union to the operation of Respondent's Burlingame facility, that Respondent sought to discourage Kneifel from seeking the assistance of the Union to remedy the employees' contractual grievances by bribing him with a substantial pay raise and threatening him with reprisals, that despite Respondent's coercion Kneifel went ahead and arranged for the employees to meet with a union representative and thereafter agreed to represent the employees on behalf of the Union as their union steward. The record further establishes that Respondent regarded Kneifel as a "troublemaker" because of his union activities, that it contemplated discharging him with other employees because they had sought the assistance of the Union to remedy their grievances, and that during December 1980 and January 1981 Respondent, through Facility Manager Smith, kept Kneifel's activities as union steward under close scrutiny. All these circumstances, plus the fact that prior to Kneifel's union activities management regarded him as an outstanding employee with the potential to become a member of management, the additional fact that his discharge on January 28, 1981, took place immediately after he had commenced his union activities despite Respondent's opposition to such conduct, and the fact that contrary to past practice Facility Manager Smith was not even consulted about Kneifel's discharge but learned about the discharge after the fact,²⁶ have led me to con-

²⁵ I recognize that this finding is based in substantial part on Joyce's memo of December 1, 1980, which was removed from Respondent's premises without permission. There is no showing or contention that the Government was a party to this unauthorized taking or that the document was taken for the purpose of aiding the Government in its case against Respondent. In fact, according to Joyce's testimony, it was taken several months prior to the filing of the charge in the instant proceeding and prior to Kneifel's discharge. Under all the circumstances I am of the view that, despite the fact that it was taken without permission from Respondent, Joyce's December 1 memo has been properly considered in evaluating Respondent's motivation in the instant case. See *N.L.R.B. v. South Bay Daily Breeze*, 415 F.2d 360 (9th Cir. 1969).

²⁶ The record establishes that prior to Kneifel's discharge, during the period Smith had been the manager of the Burlingame facility, 10 employees were discharged and in each case, except for Kneifel's discharge, Smith either made the decision himself without consulting higher management or effectively recommended the discharge. Smith testified Kneifel's discharge came as a surprise to him because he had not recommended nor was he even consulted about the discharge and the subject of disciplining Kneifel had not even been discussed with him. Regional Manager Joyce, who discharged Kneifel, testified he discharged Kneifel without consulting with Smith. Neither Joyce nor Smith advanced an explanation for Joyce's deviation from past practice by failing to even consult with Smith prior to deciding to discharge Kneifel. Respondent, in its post-hearing brief, suggests that the reason Joyce deviated from past practice in handling Kneifel's discharge was that Kneifel shared an apartment with Smith and for Joyce to have made Smith a party to Kneifel's discharge would have placed a strain on their friendship. I reject this contention. On November 24, 1981, as I have found *supra*, Joyce had no compunctions against having Smith threaten Kneifel with reprisals in an effort to dissuade him from going to the Union with the employees' grievances. Moreover, at the time of Kneifel's discharge Joyce knew that Smith had no qualms about disciplining his roommate because, as I have found *supra*, on January 26 Smith only too readily suggested that Joyce take disciplinary action against Kneifel for keeping a company motor ve-

Continued

clude that the General Counsel has made a *prima facie* showing that a motivating factor in Respondent's decision to discharge Kneifel was Kneifel's union activities, specifically that Kneifel had sought the assistance of the Union and was aiding the Union in the policing of its collective-bargaining agreement.

Having concluded, *supra*, that the General Counsel has made a *prima facie* showing that Kneifel's union activity was a motivating factor in Respondent's decision to discharge him, I shall evaluate Respondent's reasons for discharging him. In doing so I have used the Board's *Wright Line* analysis wherein "once [a *prima facie* showing] is established the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980). Since the Board "views the employer's asserted justification as an affirmative defense,"²⁷ by "demonstrate" the Board apparently means that the burden of persuasion on the ultimate issue shifts to the employer, not merely the burden of going forward with evidence to rebut the *prima facie* case. At least two courts of appeals have rejected this aspect of the Board's *Wright Line* doctrine and have held that, while an employer has the burden of going forward with evidence to rebut the General Counsel's *prima facie* case, at no time does the burden of persuasion on the ultimate issue of the existence of a violation shift to the employer, but at all times remains with the General Counsel. See *Behring International, Inc. v. N.L.R.B.*, 109 LRRM 3265, 93 LC ¶ 13,392 (3d Cir. 1982), and *N.L.R.B. v. Transportation Management Corp.*, 109 LRRM 3291, 95 LC ¶ 13,919 (1st Cir. 1982). In evaluating Respondent's defense I have adopted the courts' approach in order to avoid the possibility of a remand.

b. Respondent's defense

Tony Joyce, Respondent's regional manager, testified that he was the person who decided to discharge Kneifel, and that he reached this decision on the evening of Tuesday, January 27, 1981.²⁸ Joyce further testified that

hicle over the weekend. These circumstances, plus Joyce's failure to explain why in the case of Kneifel's discharge he did not even consult with Smith but instead deviated from Respondent's past practice of having Smith handle the discharges of personnel under his supervision, have persuaded me to reject Respondent's post-hearing argument justifying Joyce's unusual conduct.

²⁷ *Id.* at 1084, fn. 5, 1088, fn. 11.

²⁸ Joyce initially testified without qualification that his decision to discharge Kneifel was made on the evening of January 27, 1981, but later testified that his purpose in meeting with Kneifel on January 28 was to inform him of his termination "unless something came out of that session to end up on a 10-day suspension, which had been almost a norm we had established in the past for vehicle violations." Insofar as this indicates that Joyce still had an open mind about Kneifel's employment status, I reject his testimony because in terms of his testimonial demeanor Joyce did not impress me as being either a sincere or a reliable witness and, as I have found *infra*, his testimony about the closely related matter of whether he attempted to speak to Kneifel on January 27 before deciding to discharge him was false. Also the fact that when Joyce met with Kneifel on January 28 he had an envelope with Kneifel's final pay with an itemized accounting of the hours for which Respondent owed Kneifel strongly suggests that Joyce's January 27 decision to discharge Kneifel was a final one. This inference is also warranted from the fact that prior to Joyce's meeting with Kneifel on January 28 Manager Mitchell, who had come to the Burlingame facility with Joyce from Santa Ana, phoned Smith, who

Kneifel's union activity was not the reason for his discharge but that Kneifel was discharged because of the cumulative effect of his tardiness, his mishandling of the WellService inventory during Smith's vacation, his failure to return a company vehicle on January 24, 1981, and "a general lack of willingness to discuss these items on [Kneifel's] part." I shall set out and evaluate the evidence pertinent to each one of these reasons.

(1) Kneifel's tardiness

The record shows that throughout his employment Kneifel was frequently late for work and that Kneifel and employee Neal were the two employees most frequently late for work. In the spring of 1980 Kneifel was issued a written disciplinary warning because of his tardiness and suspended for 1 day and thereafter, in October 1980, both Neal and Kneifel were suspended for 1 day because of their tardiness. Despite Kneifel's tendency to be late for work, on September 15, 1980, Smith evaluated him as a good employee and recommended a substantial pay raise for him. On October 27, 1980, Joyce approved this recommendation despite the fact that Kneifel had been suspended twice for tardiness. Three weeks later Joyce granted Kneifel an even greater pay raise.

On Monday, January 19, 1981, Kneifel was approximately 1 hour late for work. On Monday, January 26, he was 19 minutes late. On Friday, January 23, he was late by almost 1-1/2 hours, but the record establishes that his tardiness on this date was excusable and Smith knew this. As I have found *supra*, on January 23 Kneifel was sick with colitis and informed office clerical Peregrina that he was sick and because of this would not be able to work that day. Peregrina informed Kneifel that without him Respondent would not have enough employees to do the available work scheduled for the day. Upon hearing this Kneifel told Peregrina that he would come to work even though he was sick. Peregrina informed Smith that Kneifel had phoned in sick but when she had told him they needed him he had agreed to come to work. Nevertheless, on January 27 Smith issued Kneifel a written disciplinary warning for being tardy on January 23 as well as on January 19 and 26. The warning also stated that Kneifel was tardy for work January 21, a date on which Kneifel was not tardy but was absent from work because of illness. Smith did not explain why he disciplined Kneifel for being tardy on January 23 when he knew Kneifel had a valid excuse for being late that day. Nor was Smith able to explain why Kneifel was disciplined for being tardy January 21, a day when he in fact was absent from work due to illness.²⁹

The disciplinary warning issued to Kneifel on January 27 for his tardiness states that "due to his tardiness the operation of this office is being affected." No evidence

was out of town, and asked whether Smith's hours for Kneifel were correct because Kneifel was being terminated.

²⁹ Initially Smith testified he was unable to explain why he disciplined Kneifel for being late for work on January 21 when in fact Kneifel was not at work due to illness that day. But he then later testified he marked Kneifel as being late because Kneifel did not call in until 8:55 a.m. to say that he was going to be out sick. Smith, in terms of his demeanor, did not impress me as being a truthful witness when he belatedly presented this testimony.

was presented by Respondent to show that in fact this was true. Kneifel's credible and undenied testimony is that no one ever informed him that his tardiness had caused any inconvenience to Respondent or otherwise adversely affected Respondent's operation. And the record reveals that during the time material to this case Kneifel's tardiness did not adversely affect Respondent's business operations. (G.C. Exh. 17.)

It is undisputed that during the time material herein employee Shaun Neal was late more frequently than Kneifel. Commencing late in November 1980 and continuing thereafter Neal was late for work 45 percent of the time, yet was not issued a disciplinary warning or otherwise disciplined even though he had been suspended for tardiness in October 1980. Instead, Smith simply "talked" to him about his tardiness. When Neal informed Smith and Joyce that it was difficult for him to get to work on time due to the bus schedule from his residence to the facility, he was told that this was not a good excuse but that he was expected to get to work on time. Nonetheless, Neal continued to be late for work approximately 45 percent of the time and during the week ending December 12 was late twice by 1 hour or more. Neal was not given a written warning or otherwise threatened with discipline.

In summation, an examination and an evaluation of the evidence pertinent to that part of Respondent's defense which is based on Kneifel's tardiness show that Kneifel was frequently tardy and that prior to his union activities had been disciplined for his tardiness, but nonetheless had been regarded by Respondent as an outstanding employee deserving of a substantial pay raise. The record further reveals that whereas, after his union activities, Kneifel continued to be tardy for work, his fellow employee Shaun Neal during this same period had an even worse tardiness record. But whereas Kneifel was threatened with discipline and issued a written disciplinary warning because of his tardiness, Neal was not either threatened with discipline or issued a disciplinary warning even though he had been suspended because of tardiness in October 1980. Also, the record reveals that the disciplinary warning issued to Kneifel for his tardiness during January 1980 was untrue insofar as it stated that "due to his tardiness the operation of this office is being affected" and stated that he had been late for work 4 days when in fact he was only late 3 days. Moreover, the warning is distorted in view of the fact that for one of the days in which Kneifel was late he had an excellent reason for being late which was known to Manager Smith at the time Smith issued him the disciplinary warning.

(2) Kneifel's failure on January 24 to return a company motor vehicle³⁰

In 1980, prior to June 18, Respondent's Burlingame facility employees were allowed to use company motor ve-

hicles for transportation to and from work and were also permitted to use the vehicles for personal purposes so long as they paid for the gasoline. This changed on June 18, 1980, when Regional Manager Joyce by memo informed the employees of the Santa Ana and Burlingame facilities that, among other things, "No company vehicle will be used for private purposes." Thereafter, the employees at the Burlingame facility were no longer permitted to use a company vehicle for private purposes, but were allowed to use a company vehicle for transportation to and from work and in fact a substantial number of the employees regularly did so. Then, late in November 1980, the employees were informed that they could no longer use company vehicles for transportation to and from work.³¹ The employees were informed, however, that this policy was not inflexible and that under proper circumstances an employee could take the company vehicle he was using home provided he secured the permission of supervision.³² And, in fact, employees thereafter, upon request, were occasionally granted permission to take the company motor vehicle they were using home at the end of the workday.

Subsequent to the institution of the new policy late in November 1980 the first employee to breach the policy was Kneifel who, as I have described in detail *supra*, on Saturday, January 24, 1981, while working "on call" drove his company vehicle home in the early afternoon after finishing his initial service calls and remained on call at home for the balance of the workday and thereafter left the motor vehicle parked in his apartment parking lot for the weekend instead of returning it to the Company that Saturday.³³ Kneifel did this without Smith's permission. Smith, who shared the same apartment with Kneifel, realized what had happened as early as the evening of Saturday, January 24, yet said nothing to Kneifel. On the next workday, Monday, January 26,

also note that Smith testified that considering the circumstances involved he was not certain Kneifel's conduct in taking the company vehicle home on January 26 was a matter for discipline.

³¹ This change in policy was announced hard on the heels of Facility Manager Smith's warning to Kneifel on November 24, 1980, that, if Respondent was required to abide by the union contract, it did not have to allow the employees to use company motor vehicles for transportation to and from work because the contract did not require this. However, there is insufficient evidence in the record to establish that Respondent changed its motor vehicle policy because of the employees' union activities.

³² As I have found *supra*, on November 24 Regional Manager Joyce informed employees Neal and Kneifel and Manager Smith that the new policy prohibiting employees from taking company vehicles home would not be enforced inflexibly but that under proper circumstances Joyce, as regional manager, Smith, as manager, and Kneifel, as senior WellService technician, had the authority to authorize exceptions to the policy. It is clear, however, that Joyce's intent was to authorize Kneifel to make exceptions to this policy only when Kneifel was substituting for Smith, in Smith's absence. And it is also clear that Kneifel understood that this was the intent behind Joyce's statement because at no time did Kneifel either to Smith or at the hearing justify his failure to return the company vehicle on January 24 on the ground that he had been led to believe by Joyce that even when Smith was present he could engage in such conduct without Smith's permission.

³³ The apartment complex parking lot where Kneifel kept the motor vehicle for the weekend was patrolled by security guards whereas Respondent's unfenced parking area was not patrolled. The fact that Kneifel's parking lot was patrolled by a security service was known by Smith since he shared an apartment with Kneifel.

³⁰ On Monday, January 26, 1981, Kneifel did not return from a job in Fresno, California, until 10:30 p.m., so he went straight home with the company vehicle even though he did not have permission. The record reveals that Joyce, in discharging him, did not in any way rely upon this conduct. In fact, Joyce apparently did not even know about it. The record reveals that Manager Smith had no knowledge of this incident. I

still without having mentioned the matter to Kneifel, Smith phoned Regional Manager Joyce at the start of the workday and told him Kneifel that weekend had kept a vehicle without permission which Smith suggested would give Joyce an opportunity to terminate Kneifel. The same day Joyce sent a Western Union mailgram to Kneifel notifying him, "You are hereby placed on warning that your failure to return company vehicle to office after close of business on Saturday, January 24 is a flagrant violation of company rules and regulations. I will notify you before close of normal working hours on Wednesday, January 28 re resolution of this matter."

With respect to how Respondent, after it instituted its policy forbidding its employees from taking company vehicles home, has treated other employees who have failed to return company vehicles to the Company's premises, the record reveals the following. In early December 1980 employee Thomas West was fired when he took a company vehicle home without permission after work and the vehicle, while parked at West's home, was burglarized resulting in the loss of computer terminals and tools. In February 1981 employees Greg Simko and Ken Leible, after failing to return their company vehicles at the end of the working day and coming to work 2-1/2 hours late the next day which caused a disruption of the Company's work schedule and service, were suspended for 10 days. On February 28, 1981, Shaun Neal took a company vehicle home without receiving permission for which he received a written disciplinary warning. Thereafter, on Saturday, March 7, 1981, Neal again without permission failed to return a company vehicle. The result was that on Sunday, March 8, Smith phoned Neal to return the vehicle to the Company's office immediately. There is no evidence that Neal was issued a written warning or otherwise disciplined on this occasion. Finally, in April 1981 on a Saturday, Neal, after being denied permission by Joyce to keep the company vehicle he was using at home, went ahead and kept the vehicle anyway for which he was discharged.

In summation, the record reveals that at the end of the workday on Saturday, January 24, when, in violation of company policy, Kneifel failed to return the company vehicle he was using without Smith's permission, that Smith, instead of saying something to him about the matter, phoned Regional Manager Joyce and suggested that Joyce use this violation of company policy as a means to discharge Kneifel. The record also reveals that Respondent does not in all cases regard the taking home of a company vehicle by an employee as a dischargeable offense let alone an offense which warrants disciplinary action. Employees Simko and Leible were only given 10-day suspensions for failing to return their company vehicles and for reporting to work the next day 2-1/2 hours late which resulted in the disruption of the Company's work schedule and service. On one occasion employee Neal was only issued a written disciplinary warning for taking home a company vehicle without permission and on a second subsequent occasion Neal was not even disciplined for failing to return a company vehicle which he had used while on call on a Saturday. Instead, Smith merely phoned him on Sunday and told him to return the vehicle immediately. Smith's treatment of Neal

stands in particularly sharp contrast to his treatment of Kneifel during the weekend of January 24-25. Smith said nothing to Kneifel about the matter, but instead on Monday phoned Joyce and suggested that Kneifel be terminated for his misconduct.

(3) Respondent's dissatisfaction with Kneifel's WellService inventory work during Smith's vacation

WellService is an electronic capture service which Wells Fargo Bank sells to merchants which enables the merchants to check their customers' credit cards and checks. Respondent has a contract with Wells Fargo to install and maintain the terminals which operate this service. These terminals are owned or leased by Wells Fargo. Pursuant to this contract Respondent is obligated to submit to Wells Fargo on a weekly basis an inventory report on all the terminals including the whereabouts of the terminals and a notation of terminals which were removed and/or installed that week. The job of compiling the weekly inventory report is not a simple clerical task but requires that the person who prepares the report check the daily information submitted by the WellService technicians. If the reports submitted by the technicians are inaccurate or omit relevant information it takes as much as 2 to 3 days for a person to compile the weekly inventory report. The record reveals it is unusual for the technicians to omit or submit inaccurate information thereby making the job of the person preparing the weekly report extremely difficult, delaying the submission of the weekly report and affecting the accuracy of the report.

Prior to June 1980 Smith prepared the weekly inventory reports, but the reports were totally disorganized, so in June 1980 Kneifel was assigned this job and instructed to "get the place in order" because Wells Fargo intended to audit the inventory. From June 1980, when Kneifel took over the job of preparing the WellService weekly inventory report, up to the time of Smith's vacation in late December 1980, the reports submitted by Kneifel were usually submitted late and usually contained inaccuracies. In fact, it was not uncommon for the report to be a week late and to be submitted only after a phone call from Kim Weppner, the Wells Fargo inventory controller, inquiring about the overdue report. The main reason for the late reports and the inaccuracies in the report was that the technicians constantly were either omitting to submit information or submitting inaccurate information to Kneifel, which required substantial investigation thereby causing Kneifel to spend an inordinate amount of his worktime preparing the WellService inventory reports. Inasmuch as Kneifel was also expected to perform the usual installation and maintenance work in the field, his weekly inventory reports were usually submitted late and contained inaccuracies. And from June 1980 up to the time of Smith's vacation in December 1980, Smith continually complained to Kneifel about the lateness of the reports and the inaccuracies. In response Kneifel explained to Smith about the problem he was having with the technicians either omitting data or transmitting incorrect data and named the offending technicians. Smith re-

plied that he would talk to the technicians. The record is silent as to whether Smith, in fact, ever made any effort to resolve this problem by talking to the technicians. In any event, it is undisputed that from June 1980 right up to Kneifel's discharge the problem of the technicians submitting inaccurate information or no information was a continuing problem which was never solved.

Despite the fact that from June 1980 to the latter part of December 1980 the weekly WellService inventory reports prepared by Kneifel were commonly 1 week late and contained inaccuracies, Joyce testified that he was more than satisfied with the way that Kneifel was handling this job during that period. Indeed, Smith's September 15, 1980, job evaluation of Kneifel's work, which was approved by Joyce on October 27, 1980, and which resulted in Kneifel receiving a substantial pay raise, stated in pertinent part, "[Kneifel] has done very well with inventory status reports. WellService is very impressed with the job performance"

Late in December 1980 and early in January 1981, from December 18 to January 5, 1981, Smith was absent from work on vacation. During this period which encompassed the Christmas and New Year's holidays Respondent only operated 4 days a week. During the first 2 days of the first full week of Smith's absence, Monday, December 22, and Tuesday, December 23, Joyce came to the Burlingame facility from Santa Ana and substituted for Smith. And, during the first 2 days of the second week, Monday, December 29, and Tuesday, December 30, the manager of the Santa Ana facility, Doug Mitchell, came to the Burlingame facility and substituted for Smith. During the remaining period of time Kneifel assumed Smith's responsibilities. In addition, Kneifel, throughout this period, continued to perform his usual installation and maintenance work in the field.³⁴

It is undisputed that, prior to Smith's departure for vacation, Kim Weppner, Wells Fargo's inventory controller, expressed concern to Smith that in Smith's absence there would be an interruption in the submission of the weekly inventory reports. Smith assured him that there would be no interruption and instructed Kneifel that there should be no interruption in the submission of the weekly inventory reports during Smith's vacation. Nevertheless, Kneifel failed to submit the weekly inventory reports to Wells Fargo during Smith's absence. The reports for the weeks ending December 19³⁵ and 26 and January 6 were not submitted until after Smith's return. Weppner, sometime during this period, phoned and spoke to Kneifel and asked why he was not receiving the weekly inventory reports. Kneifel told him that due to Smith's absence the office was disorganized and that

since it was a holiday period there was more business for them to handle.

On Monday, January 5, 1981, Smith returned from his vacation and on that day Weppner phoned and told him that he was unhappy because he had not received any of the weekly inventory reports during Smith's absence. Weppner asked that Smith remedy the situation immediately by submitting the missing reports and to meet with him to discuss the matter. Smith immediately spoke to Kneifel and asked him why none of the weekly inventory reports had been prepared during Smith's absence. Kneifel told him that it was so busy during that period that he was unable to do them. Thereafter, Smith and Kneifel and Peregrina, apparently that day, "more or less got the [weekly inventory reports] up to date" and Smith hand delivered them to Wells Fargo that day or the next.³⁶

On January 7, 1981, Weppner met with Smith and told him that during Smith's 2-week vacation Wells Fargo had experienced the following problems with the weekly inventory reports, also known as weekly status updates:

1. The written copies of the Weekly Status Updates were not delivered to WellService, as has been the accepted procedure.
2. The Rikal technicians were not communicating inventory changes in the field to the office person responsible for compiling the information and transmitting it to WellService.
3. Merchant Signature Request Forms for removals from purged accounts were not forwarded to WellService.
4. Requests for a report of the movement of inventory into and out of the Rikal warehouse were not consistently complied with.

³⁴ The finding that Joyce and Mitchell were in charge of the Burlingame facility in place of Smith on those days they were present and that they were present on December 22-23 and December 29-30, respectively, is based on the testimony of office clerical Peregrina. The finding that Kneifel during Smith's vacation spent a great deal of his time in the field is based on his uncontradicted testimony. I reject Joyce's testimony that Joyce and Mitchell were not in charge of the facility but were there to simply do whatever Kneifel wanted them to do. Joyce demeanorwise impressed me as an insincere and unreliable witness whereas Peregrina impressed me as a credible witness.

³⁵ As noted earlier Smith left on his vacation at the close of business on Wednesday, December 17, 1980.

³⁶ Smith testified that Kneifel's explanation that during Smith's vacation he was too busy with his other work to do the weekly inventory reports was untrue, "because all the other weeks prior to these 2 weeks of my vacation they [referring to the weekly inventory reports] were getting in on a timely basis." This is false as Weppner, a disinterested witness, testified that the weekly inventory reports were commonly submitted 1 week late and submitted only after Weppner inquired about their whereabouts. Smith then testified that even if it was busy during his vacation Kneifel still should have submitted the inventory reports on time because the job of compiling them was a simple clerical job with all of the work already having been done by office clerical Peregrina and the technicians. This is also false inasmuch as the record reveals that the work of preparing the weekly inventory reports has always been a time-consuming task and requires that Kneifel conduct his own independent investigation. In fact, ultimately Smith reluctantly admitted that the job was a difficult and time-consuming one which could take as much as 2 or 3 full workdays. Finally, apparently realizing that the reasons he had given for disbelieving Kneifel's explanation were inherently implausible, Smith belatedly testified that the maintenance and installation records maintained by Respondent for the period of Smith's vacation showed that it was not a busy work period. Demeanorwise Smith was not a convincing witness when he gave this testimony nor were the records produced to corroborate this testimony. These circumstances, when viewed in the light of Smith's previous false testimony on this subject and Kneifel's credible testimony that during Smith's absence he was working in the field and the fact that during a portion of Smith's vacation Kneifel was in charge of the facility, have persuaded me to reject Smith's testimony that Kneifel lied when he told Smith that he was unable to prepare the inventory reports due to the pressure of other work.

Weppner stressed to Smith that Wells Fargo's "main concern was to assure the continued open flow of accurate data between Rikal and WellService." Smith assured him the problem was being addressed so there would be no further incidents of a similar nature.

On January 7, 1981, Smith promptly notified Regional Manager Joyce about his meeting with Weppner and what Weppner had stated to him. Joyce instructed Smith to discover what the deficiencies were so that Joyce would be prepared for the regular quarterly review meeting between representatives of Respondent and WellService which was scheduled for the middle of January 1981.

On approximately January 15, 1981, representatives of Respondent and WellService held their regularly scheduled quarterly meeting. Present for Respondent were Joyce and Smith and for WellService Kim Weppner, Cindy Morey, the head of installation maintenance, and Geri Kraft, Weppner's immediate supervisor. Morey reiterated what Weppner had stated to Smith on January 7, 1981, and emphasized that Well Fargo found what had happened during Smith's vacation as being totally unacceptable and stated it could not happen again and that Morey was extremely upset over what had happened.³⁷

On January 23, 1981, Joyce sent a memo to Kneifel captioned "*Subject: Confirmation of verbal instructions to you from your office manager*":

Effective January 19, 1981 you are relieved of all responsibility to oversee the general inventory of terminals maintained at the Burlingame Office.

The reason for this action is the totally unprofessional manner in which this responsibility was handled during the period of 12/22/80 through 1/16/81:

- a. No weekly reports were made for 3 weeks.
- b. Reports were inaccurate.
- c. Unprofessional verbal communications with the customer.
- d. Continual verbal assurances to me that these items were being maintained and reported on a regular basis.

The impact of this has damaged the credibility of this company with its' customer, and further action in this matter will be taken.

The January 23 memo was erroneous insofar as it indicates that its contents already had been discussed with Smith who in turn had already discussed the contents with Kneifel. Thus, on January 27, 1981, when Kneifel received the memo Smith admitted that it was a surprise to him that Kneifel had been relieved of the responsibility of preparing the weekly inventory reports. No expla-

nation was advanced for Joyce's failure to consult with Smith about the matters contained in the memo prior to the issuance of this memo or at least prior to its receipt by Kneifel.

WellService's complaints were concerned with what had happened during the period ending January 5, 1981, while Smith had been away on vacation. The January 23 memo reprimands Kneifel for the way he handled the job during the further period from January 5 through January 16, 1981. No evidence was presented by Respondent to support a finding that during this latter period Kneifel miscondacted himself in preparing the weekly inventory reports. Nor was any explanation offered for the inclusion of that period in the memo.

There is absolutely no evidence in the record to establish that, as alleged in the January 23 memo, Kneifel was guilty of "unprofessional verbal communications with the customer." Kneifel's credible and undenied testimony is that the first time he ever heard he was guilty of such conduct was on January 27 when he received a copy of the memo. No explanation was offered for the inclusion of this allegation of misconduct.

There is absolutely no evidence in the record to establish that, as alleged in the January 23 memo, Kneifel was guilty of continual verbal assurances to Joyce during Smith's vacation that the weekly inventory reports were being maintained and reported on a regular basis. Kneifel's credible and undenied testimony is that he gave no such assurances at any time to Joyce. No explanation was given for the inclusion of this allegation in the memo.

In summation, the record established that, insofar as Joyce relied on Kneifel's mishandling of the weekly inventory reports as a justification for his discharge, Joyce's reasons for this are set out in the January 23 memo relieving Kneifel from performing this part of his job. As I have found *supra*, the reasons set forth in this memo to justify Joyce's action against Kneifel are in substantial part false,³⁸ and in other respects involve conduct which, based on what had taken place during the several months prior to Smith's vacation, Respondent must have known was not Kneifel's fault. Thus, for the several months prior to Smith's vacation Respondent had held Kneifel's weekly inventory report work in high esteem even though the reports were usually submitted 1 week late and contained inaccuracies. The reason Respondent not only condoned this conduct but regarded Kneifel's work as outstanding was that, as described above, Respondent realized that the job of preparing the weekly inventory reports was a time consuming and difficult task and also knew that as a matter of course Respondent's technicians either omitted to supply information or supplied Kneifel with inaccurate information for these reports and that in order to minimize the number of inaccuracies in the reports Kneifel was required to

³⁷ The description of what took place at this meeting is based on the credible testimony of Kim Weppner, a disinterested witness. I rejected Joyce's testimony that during this meeting the WellService representatives stated that "they are prepared to exercise the 30 day cancellation clause of the contract if there was not an immediate improvement in this inventory reporting situation." Neither Weppner nor Smith corroborated this testimony and, in terms of his demeanor when he presented this testimony, Joyce did not impress me as an honest witness.

³⁸ As I have found *supra*, there is no evidence that Kneifel misconducted himself with respect to the weekly inventory reports during the period from January 5 through January 16 or that during the period when Smith was vacationing Kneifel engaged in unprofessional communication with WellService personnel or gave assurances to Joyce that the weekly inventory reports were being maintained and reported on a regular basis.

conduct an independent check of the data submitted by the technicians. Under the circumstances it could hardly have come as a surprise to Respondent that during Smith's vacation Kneifel was unable to produce the weekly inventory reports while at the same time performing his other work as a technician and substituting on 6 of the 10 working days for Smith during his absence. Moreover, even assuming Kneifel was at fault for failing to produce the weekly inventory reports during Smith's absence, Joyce's conduct in attributing several other types of misconduct to Kneifel in the January 23 memo, which are completely without substance, warrants the inference that Joyce realized that under the circumstances disciplining Kneifel for merely failing to submit the inventory reports in a timely manner was unreasonable, so Joyce was compelled to manufacture other instances of misconduct in order to justify the discipline. Lastly, also relevant in evaluating Joyce's proffered reasons for disciplining Kneifel for his conduct in connection with the weekly inventory reports is Joyce's failure to even consult with Manager Smith about the discipline. Thus, the January 23 memo, on its face, indicates that Joyce consulted with Smith or at the very least had talked with Smith about Kneifel's discipline. However, it is undisputed that the memo came as a surprise to Smith who was not consulted about it by Joyce and first learned on January 27 that Joyce had relieved Kneifel of his responsibility for the weekly inventory reports. I think it is a fair inference that Joyce's reason for not consulting with Smith about this matter is that Joyce knew that the majority of the acts of misconduct attributed to Kneifel in this memo were either completely without substance or did not justify relieving him from the responsibility of this duty which, considering the circumstances, he had performed in an exemplary manner for the past several months.

- (4) Kneifel allegedly refuses to speak to Joyce and explain his misconduct thus forcing Joyce to discharge him

Joyce testified that, on the morning of January 26, 1981, when Smith told him that on Saturday, January 24, Kneifel had kept a company vehicle at his apartment without Smith's permission, Joyce told Smith that he wanted to speak to Kneifel about this matter, but Smith informed Joyce that Kneifel had not reported for work yet. That Joyce asked to talk to Smith on this day is not corroborated by Smith's testimony and there is no evidence that on January 26 before Kneifel left for his work assignment Smith informed him that Joyce wanted to talk to him.

Joyce further testified that, before deciding what if any discipline should be handed out to Kneifel, it was Joyce's intent to afford Kneifel an opportunity to explain his actions because Joyce regarded Kneifel as a valued employee who Joyce felt had the potential to be a part of management. And, with this in mind, Joyce testified that on the morning of January 27 he phoned the Burlingame facility and told Peregrina and Smith that he wanted to talk with Kneifel; he explained to Smith that the reason he wanted to talk to Kneifel was to get an explanation for his recent misconduct. When Peregrina and

Smith advised him that Kneifel was out of the office making service calls, Joyce testified he told them to contact Kneifel in the field and have him phone Joyce and that they indicated they would do so. Nevertheless, it is undisputed that neither Peregrina nor Smith contacted Kneifel and advised him that Joyce wanted to talk with him. However, late in the afternoon on January 27, 1981, Joyce testified that Smith phoned him and told Joyce that "[Kneifel's] attitude was sue me." Joyce testified that at this point he concluded Kneifel was not going to speak to him and explain his recent misconduct, so Joyce decided that his only alternative was to discharge Kneifel. Specifically, Joyce testified that, in view of Smith's statement and Kneifel's failure to contact him, at the close of business on January 27, "I accepted that as the fact there would be no communication and [that] termination rather than suspension was in order."

I reject Joyce's above-described testimony in its entirety because I am convinced that it was a fabrication and that Joyce, at no time, prior to deciding on January 27 to discharge Kneifel, ever attempted to get in touch with Kneifel and talk with him about his misconduct. I have reached this conclusion based upon these considerations: First, when Joyce gave the above testimony his manner of testifying, his demeanor, was insincere and without conviction; second, Joyce's testimony that later in the afternoon of January 27 Smith informed him that "[Kneifel's] attitude was sue me" is contradicted by Smith's testimony. Smith testified that prior to Kneifel's discharge he only discussed Kneifel's work performance or attitude once with Kneifel and that the sole conversation took place on Friday, January 23, the week before Smith went to Reno, Nevada,³⁹ and that the only thing that Smith told Joyce about Kneifel during this conversation was that "I was concerned about Kneifel's attitude toward his job and why his decline in his work was happening"⁴⁰ and that Joyce replied, "he would look into it"; third, Smith did not corroborate Joyce's testimony that, as described above, on January 26 and 27 Joyce asked Smith to have Kneifel phone him; fourthly, Peregrina, who impressed me in terms of her demeanor as a credible witness, specifically contradicted Joyce's testimony that on January 27 Joyce asked her to have Kneifel contact him; and lastly, Joyce's testimony is inherently implausible because the record reveals it would have been very easy for either Peregrina and/or Smith to have contacted Kneifel on January 27 and told him that Joyce wanted to talk to him, yet it is undisputed that neither one did. It is for all the foregoing reasons that I reject Joyce's testimony that prior to deciding to discharge Kneifel on January 27 that he made an effort to speak with Kneifel in order to get an explanation for Kneifel's misconduct. Rather, I find that Joyce decided to discharge Kneifel on January 27 without affording him an opportunity to explain his version of what had taken place despite the fact that Joyce regarded Kneifel as a valued employee.

³⁹ Smith went to Reno on Wednesday, January 28.

⁴⁰ Smith testified he was referring to Kneifel's tardiness from work during that week.

(5) Ultimate conclusions regarding Respondent's defense

Based on my evaluation of Joyce's reasons for discharging Kneifel, as set forth *supra*, I am of the opinion that Respondent has failed to establish that Kneifel's tardiness or his keeping a company vehicle on January 24 at his apartment without permission, or his mishandling of the WellService inventory reports while Smith was on vacation, either singularly or together, during the normal course of business would have resulted on January 28, 1981, in his being discharged. Rather, a close scrutiny of the evidence reveals that these were not the real reasons for Kneifel's discharge. In so concluding I was influenced by these considerations.

In each of the approximately 10 cases where Burlington facility employees were discharged prior to Kneifel's discharge, Facility Manager Smith played a significant part in the discharge. In each case he either made the decision to discharge or effectively recommended that the employee be discharged. In sharp contrast Kneifel's discharge came as a surprise to Smith, who was not even consulted about the matter and only learned about it after the fact.

Other employees who engaged in similar acts of misconduct as Kneifel were either not disciplined or treated more leniently than Kneifel. Employees Simko and Leible were given 10-day suspensions for failing to return their company vehicle *and* for reporting to work the next day 2-1/2 hours late which resulted in the disruption in Respondent's service to its customers. Employee Shaun Neal, with a worse tardiness record than Kneifel, took a company vehicle home twice without permission, yet received only a written disciplinary warning for his first vehicle offense and was not disciplined, either by a written warning or otherwise, for either his tardiness or second motor vehicle offense even though he had been suspended previously because of his tardiness. Indeed, Smith's conduct in connection with Neal's second motor vehicle offense vividly demonstrates the disparate treatment accorded to Kneifel's identical offense. In Neal's case Smith phoned Neal on Sunday and had him return the motor vehicle that day without any discipline. Yet in Kneifel's case Smith said nothing about the vehicle to Kneifel all weekend and on Monday, still without speaking to Kneifel, phoned Joyce and suggested to Joyce that Kneifel's misconduct in keeping the company vehicle gave Joyce an opportunity to discharge Kneifel.

Respondent's fabrication of additional acts of misconduct which it attributed to Kneifel strongly suggests that Kneifel's misconduct would not have resulted in his discharge because Respondent, viewing Kneifel's past record as an outstanding employee, realized that the misconduct Kneifel actually engaged in was not sufficient to warrant the drastic penalty of discharge. As I have described in detail *supra*, the basis for the written disciplinary warning issued to Kneifel on January 27 for his tardiness was in substantial part false and distorted. Likewise, as described in detail *supra*, the reasons set out in the January 23 memo to justify disciplining Kneifel for his misconduct in connection with the weekly inventory reports were in substantial part false and in other re-

spects involved conduct which, based on what had taken place in the past, Respondent must have known was not Kneifel's fault. Lastly, and most significantly, Joyce falsely testified that the event which triggered his decision to discharge Kneifel was Kneifel's refusal to speak with Joyce on January 27 and discuss his misconduct. As I described in detail *supra*, Kneifel was not guilty of this.

It is for the foregoing reasons that I find that an examination and an evaluation of the reasons advanced by Joyce to justify Kneifel's discharge do not warrant a finding that Kneifel would have been discharged during the normal course of business even absent his union activities, but instead warrant a finding that the reasons advanced by Joyce were not the real reasons for the discharge.

c. Ultimate conclusions

As I have found *supra*, the General Counsel has established a *prima facie* case that Kneifel's discharge was motivated on account of his union activities. I am of the view, for the reasons set forth *supra*, that Respondent has not met its burden of going forward with sufficient evidence to rebut the General Counsel's *prima facie* case. But, assuming that the fact that Kneifel did in fact engage in certain conduct which on its face constitutes legitimate grounds for discharge is sufficient to meet Respondent's burden of going forward with sufficient evidence to rebut the General Counsel's *prima facie* case, I further find that the General Counsel has established that Respondent's reasons were not its true reasons for discharging Kneifel and that this plus, the evidence which constitutes the General Counsel's *prima facie* case *supra*, establishes that the General Counsel has proven by a preponderance of the evidence that Kneifel's discharge was motivated by his union activities. I therefore find that by discharging Kneifel on January 28, 1981, Respondent violated Section 8(a)(1) and (3) of the Act.

d. Respondent's 10(b) defense

Respondent argues that all the evidence of events which took place prior to January 7, 1981, may not be considered in order to determine whether Kneifel's discharge on January 28, 1981, was illegally motivated because the events which predated January 7, 1981, occurred outside the 10(b) limitation period. I reject this contention. The challenged evidence is relevant and probative to shed light on the nature of Respondent's motivation "as it existed at the time of [Kneifel's discharge] even though it may not be used to establish the events constituting the alleged unfair labor practices." *Pulitzer Publishing Co. v. N.L.R.B.*, 618 F.2d 1275 (8th Cir. 1980). Here, the events constituting the alleged unfair labor practice charge, the discharge of Kneifel on January 28, 1981, post-dated the 10(b) limitation period. This case is virtually identical to *Stafford Trucking, Inc.*, 154 NLRB 1309, 1310 (1965), *enfd.* on this point 371 F.2d 244, 246-247 (7th Cir. 1967), in that as in *Stafford Trucking* virtually all of the evidence revealing Respondent's motive in discharging Kneifel, other than the reasons for the discharge, occurred outside the 10(b) period preceding the charge. Yet, in *Stafford Trucking* the Board and

the court of appeals, relying on the Supreme Court's decision in *Local Lodge No. 1424, IAM [Bryan Mfg. Co.] v. N.L.R.B.*, 362 U.S. 411 (1960), rejected the contention that it was impermissible for the Board to consider the evidence which predated the limitations period for the purpose of shedding light on the motivation behind the discharge which occurred within the 10(b) period, even though the actual discharge was the only act which took place within the 10(b) period. In the instant case Kneifel's discharge took place within the 10(b) period and, as I have found *supra*, Respondent's ostensible reasons for discharging him are not the real reason, thus leaving the real reason for Kneifel's discharge unexplained by events occurring within the 6-month period. Accordingly, I find that consideration of background evidence for the purpose of seeking an explanation of Respondent's true motivation is warranted here.⁴¹

2. Smith interrogates employee Peregrina about her union activities and the union activities of other employees

As described in detail *supra*, sometime between the middle of January 1981 and the date of Kneifel's discharge, January 28, Scott Smith, the manager of the Burlingame facility, on several different occasions asked Kerry Peregrina, the office clerical employee at the facility, whether Kneifel had been in contact with the Union or whether union representative Roberts had called and talked with Kneifel. Also during the middle of January 1981 Smith, as I have described in detail *supra*, asked Peregrina whether the employees intended to hold a union meeting at Peregrina's home and instructed Peregrina not to attend such a meeting.⁴²

Smith, the highest ranking representative of management at the Burlingame facility, had no justification for engaging in the above-described interrogation and, at the time of the interrogation, offered no justification to Peregrina for his conduct. Quite the contrary, with respect to his interrogation about the union meeting at Peregrina's house, Smith instructed her not to attend such a meeting. The record also reveals that Smith was openly hostile to union representation and that his interrogation of Peregrina took place shortly before Kneifel was discharged because of his union activities. Under these circumstances I find that Respondent violated Section 8(a)(1) of the Act, as alleged in the complaint, when Smith, in the middle of January 1981, interrogated employee Peregrina

about her own union activities and the union activities of other employees.

3. Smith interrogates employee Peregrina about her communications with the Board

As described in detail *supra*, during the week of January 12, 1981, employees Peregrina and Kneifel visited the Regional Office of the National Labor Relations Board. Thereafter, on or about January 19, 1981, Smith asked Peregrina whether Peregrina and Kneifel had been to the "Labor Board" and when Peregrina answered in the affirmative asked why they visited the "Labor Board" and what they were planning on doing. Peregrina indicated she had no immediate plans but asked Smith what she should do if someone asked her to go to the Board. Smith initially replied that he did not know what she should do, but shortly thereafter informed her she should ask Regional Manager Joyce for his advice about the matter, whereupon Peregrina phoned Joyce and was told by him that whether she went to the Board was totally her decision and that he could not give her any advice about the matter.

I am of the opinion that, as alleged in the complaint, when Smith interrogated Peregrina about whether or not she and Kneifel had visited the Board and questioned her about the reason he visited the Board, Respondent violated Section 8(a)(1) of the Act because the interrogation, which was undertaken by the highest ranking management official at the Burlingame facility, was without justification or assurances against reprisals and took place in the context of Kneifel's illegal discharge.⁴³

CONCLUSIONS OF LAW

1. Rikal West, Inc., the Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Brotherhood of Electrical Workers, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Robert Kneifel on January 28, 1981, Respondent violated Section 8(a)(1) and (3) of the Act.

4. By interrogating Kerry Peregrina in the middle of January 1981 about her union activities and the union activities of other employees, Respondent violated Section 8(a)(1) of the Act.

5. By interrogating Kerry Peregrina on January 19, 1981, about whether she and another employee visited the National Labor Relations Board and about the purpose of the visit, Respondent violated Section 8(a)(1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

⁴¹ *News Printing Co., Inc.*, 116 NLRB 210 (1956), relied on by Respondent, is therefore significantly distinguishable from the instant case because in that case there is no similar evidence of equivocation requiring an explanation with respect to that respondent's conduct within the statutory 6-month period. See *Paramount Cup Manufacturing Co.*, 119 NLRB 785, 787 (1957).

⁴² Smith did not expressly use the word "union" in this conversation, but asked whether the employees were meeting at Peregrina's home. Nevertheless, I am persuaded, when viewed in the context in which it occurred, that Smith's reference to a meeting of employees referred to a union meeting and that Smith must have known that Peregrina would have realized this was what he was talking about. Thus, early in December 1980, as described in detail *supra*, Smith, in the context of questioning Peregrina about Kneifel's union activities, asked why Peregrina was visiting with Kneifel so frequently, whether they were discussing the Union and whether Peregrina's husband, who was a member of the Teamsters Union, was discussing the Union with Respondent's employees.

⁴³ I shall recommend that the portion of the complaint which alleges that Smith told Peregrina not to communicate with the Board be dismissed because, as I have found *supra*, there is insufficient evidence to support that allegation.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent cease and desist from engaging in the unfair labor practices found herein and to reinstate Robert Kneifel to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and I shall recommend that Respondent make Kneifel whole for any loss of earnings he may have suffered because of the discrimination practiced against him by payment to him of a sum equal to what he normally would have earned from the date of his discharge on January 28, 1981, to the date Respondent offers him reinstatement, less his net earnings during that period. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁴⁴

The Respondent, Rikal West, Inc., Burlingame, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee for the purpose of discouraging employees from engaging in union activity.

(b) Interrogating employees about their union activities and the union activities of other employees.

(c) Interrogating employees about whether they have visited and the purpose of their visit to the National Labor Relations Board.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Robert Kneifel immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay which he may have incurred by reason of Respondent's discrimination against him in the manner described in the section of this Decision entitled "The Remedy."

(b) Expunge from its files any references to the discharge of Robert Kneifel on January 28, 1981, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

⁴⁴ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Burlingame, California, facility copies of the attached notice marked "Appendix."⁴⁵ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that Respondent violated the Act other than found herein.

⁴⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against employees for the purpose of discouraging them from engaging in union activity.

WE WILL NOT interrogate employees concerning their union activities or the union activities of other employees.

WE WILL NOT interrogate employees about whether they have visited or their reason for visiting the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL offer to Robert Kneifel immediate and full reinstatement to his former job or, if his former job no longer exists, to a substantially equivalent position of employment, without prejudice to his seniority or other rights, and WE WILL make him whole for any loss of pay he may have suffered by reason of our discrimination against him, with interest.

WE WILL expunge from our files any reference to the disciplinary discharge of Robert Kneifel on January 28, 1981, WE WILL notify him that this has been done and that evidence of this unlawful dis-

charge will not be used as a basis for future personnel actions against him.

RIKAL WEST, INC.